

AO 257 (Rev. 6/78)

**DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT**
 BY: ☐ COMPLAINT ☒ INFORMATION ☐ INDICTMENT  
☒ SUPERSEDING
**OFFENSE CHARGED**
 18 U.S.C. § 1349 – Conspiracy to Commit Wire Fraud;  
 18 U.S.C. § 1343 – Wire Fraud;  
 18 U.S.C. § 7206(1) – Making and Subscribing a False Tax  
 Return;  
 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c) – Forfeiture

☐ Petty  
☐ Minor  
☐ Misdemeanor  
☒ Felony

PENALTY: 18 USC §1349– 20 yrs prison, \$250k fine, 5 yr supervised rel., \$100 special assessment; 18 USC §1343– 20 yrs prison, \$250k fine, 5 yr supervised rel., \$100 assessment; 18 U.S.C. § 7206(1)– 3 yrs prison, \$250k fine, 1 yr supervised rel., \$100 special assessment; 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c)

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

**DEFENDANT - U.S.**

ERICH SCHOENWISNER

DISTRICT COURT NUMBER

CR-19-00105-RS

**PROCEEDING**

Name of Complainant Agency, or Person (&amp; Title, if any)

INTERNAL REVENUE SERVICE

☐ person is awaiting trial in another Federal or State Court  
 give name of court

☐ this person/proceeding is transferred from another district  
 per (circle one) FRCrp 20, 21, or 40. Show District

☐ this is a reprosecution of  
 charges previously dismissed  
 which were dismissed on motion  
 of:

☐ U.S. ATTORNEY ☐ DEFENSE
SHOW  
DOCKET NO.
☐ this prosecution relates to a  
 pending case involving this same  
 defendant
MAGISTRATE  
CASE NO.
☐ prior proceedings or appearance(s)  
 before U.S. Magistrate regarding this  
 defendant were recorded under

Name and Office of Person

Furnishing Information on this form DAVID L. ANDERSON

☒ U.S. Attorney ☐ Other U.S. Agency

Name of Assistant U.S.

Attorney (if assigned)

Jose Olivera, AUSA

**IS NOT IN CUSTODY**

Has not been arrested, pending outcome this proceeding.

☒ If not detained give date any prior  
 summons was served on above charges

☐ 3) Is on Bail or Release from (show District)
**IS IN CUSTODY**
☐ 4) On this charge

☐ 5) On another conviction

☐ Federal ☐ State

☐ 6) Awaiting trial on other charges

If answer to (6) is "Yes", show name of institution

 Has detainer ☐ Yes  
 been filed? ☒ No

 If "Yes"  
 give date  
 filed
DATE OF  
ARREST

Month/Day/Year

Or... if Arresting Agency &amp; Warrant were not

DATE TRANSFERRED  
TO U.S. CUSTODY

Month/Day/Year

☐ This report amends AO 257 previously submitted
**ADDITIONAL INFORMATION OR COMMENTS****PROCESS:**
☐ SUMMONS ☒ NO PROCESS\* ☐ WARRANT

Bail Amount: \_\_\_\_\_

If Summons, complete following:

☐ Arraignment ☐ Initial Appearance

Defendant Address:

 \* Where defendant previously apprehended on complaint, no new summons or  
 warrant needed, since Magistrate has scheduled arraignment

Date/Time: \_\_\_\_\_ Before Judge: \_\_\_\_\_

Comments:

AO 257 (Rev. 6/78)

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Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

**DEFENDANT - U.S.**

DAVID MISHLER

DISTRICT COURT NUMBER

CR-19-00105-RS

**PROCEEDING**

Name of Complainant Agency, or Person (&amp; Title, if any)

INTERNAL REVENUE SERVICE

☐ person is awaiting trial in another Federal or State court  
 give name of court

☐ this person/proceeding is transferred from another district  
 per (circle one) FRCrp 20, 21, or 40. Show District

☐ this is a reprosecution of  
 charges previously dismissed  
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SHOW  
DOCKET NO.
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 defendant
MAGISTRATE  
CASE NO.
☐ prior proceedings or appearance(s)  
 before U.S. Magistrate regarding this  
 defendant were recorded under

Name and Office of Person

Furnishing Information on this form DAVID L. ANDERSON

☒ U.S. Attorney ☐ Other U.S. Agency

Name of Assistant U.S.

Attorney (if assigned) Jose Olivera AUSA

**IS NOT IN CUSTODY**

Has not been arrested, pending outcome this proceeding.

☒ If not detained give date any prior  
 summons was served on above charges
2) ☐ Is a Fugitive3) ☐ Is on Bail or Release from (show District)**IS IN CUSTODY**4) ☐ On this charge5) ☐ On another conviction
☐ Federal ☐ State
6) ☐ Awaiting trial on other charges

If answer to (6) is "Yes", show name of institution

 Has detainer ☐ Yes  
 been filed? ☒ No

 If "Yes"  
 give date  
 filed
DATE OF  
ARREST

Month/Day/Year

Or... if Arresting Agency &amp; Warrant were not

DATE TRANSFERRED  
TO U.S. CUSTODY

Month/Day/Year

☐ This report amends AO 257 previously submitted
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Bail Amount: \_\_\_\_\_

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☐ Arraignment ☐ Initial Appearance

Defendant Address:

 \* Where defendant previously apprehended on complaint, no new summons or  
 warrant needed, since Magistrate has scheduled arraignment

Date/Time: \_\_\_\_\_ Before Judge: \_\_\_\_\_

Comments:

1 DAVID L. ANDERSON (CABN 149604)  
2 United States Attorney

3 **FILED**

4 MAR - 4 2019

5 SUSAN Y. SOONG  
6 CLERK, U.S. DISTRICT COURT  
7 NORTHERN DISTRICT OF CALIFORNIA

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION

11 UNITED STATES OF AMERICA,	)	CASE NO. CR: 19-105-RS
	)	
12 Plaintiff,	)	<u>VIOLATIONS:</u> 18 U.S.C. § 1349 –
13 v.	)	Conspiracy to Commit Wire Fraud; 18
	)	U.S.C. § 1343 – Wire Fraud; 26 U.S.C.
14 ERICH SCHOENWISNER AND	)	§ 7206(1) – Making and Subscribing A
15 DAVID MISHLER,	)	False Tax Return; 18 U.S.C. §
	)	981(a)(1)(C), 28 U.S.C. § 2461(c) –
16 Defendants.	)	Forfeiture
	)	
17	)	SAN FRANCISCO VENUE

18 SUPERSEDING INFORMATION

19 The United States Attorney charges:

20 Introductory Allegations

- 21 1. From at least 2011 through July 2018, defendant ERIC SCHOENWISNER  
22 (“SCHOENWISNER”) resided in Alameda, California.
- 23 2. From at least 2011 through July 2018, defendant DAVID MISHLER (“MISHLER”)  
24 resided in Rohnert Park, California.
- 25 3. From at least 2011 through 2017, SCHOENWISNER owned and operated HAPPE  
26 Supply Company (“HAPPE”), a sole proprietorship that offered products for purchase to hotels in  
27 and around the Bay Area. SCHOENWISNER incorporated HAPPE in 2018, but continued to wholly  
28 own and operate HAPPE.

1           4.       From 2011 through July 2018, MISHLER worked as a chief engineer for a hotel in  
2 Burlingame, California ("Burlingame hotel"). MISHLER's duties as the chief engineer for the  
3 Burlingame hotel included issuing purchase orders to third party suppliers, including HAPPE, for  
4 various products.

5           5.       As the Burlingame hotel's chief engineer, MISHLER created, signed, and issued  
6 purchase orders to SCHOENWISNER/HAPPE for the purchase of various products for the Burlingame  
7 hotel. In turn, SCHOENWISNER caused corresponding invoices to be created and submitted to the  
8 Burlingame hotel that requested payment for the products identified on the purchase orders.

9           6.       The Burlingame hotel issued payment, via check, to SCHOENWISNER/HAPPE  
10 according to the invoices SCHOENWISNER caused to be submitted to the Burlingame hotel.  
11 SCHOENWISNER deposited or cashed, or caused to be deposited or cashed, the Burlingame hotel's  
12 checks into Bank of the West accounts he owned or controlled.

13           7.       As part of Bank of the West's check clearing process, wire transmissions were sent from  
14 California to Wells Fargo N.A. processing sites in either Arizona or Minnesota to confirm the presence  
15 of funds for each of the Burlingame hotel checks payable to SCHOENWISNER/HAPPE.

16           8.       The IRS is an agency of the United States within the Department of the Treasury of the  
17 United States and is responsible for enforcing and administering the United States tax laws.

18 COUNT ONE: (18 U.S.C. § 1349 – Conspiracy to Commit Wire Fraud)

19           9.       Paragraphs 1 through 8 of the Information are realleged as if fully set forth here.

20           10.       Beginning in or about June 2011 and continuing to in or about June 2018, in the Northern  
21 District of California and elsewhere, the defendants,

22                               ERICH SCHOENWISNER and  
23                               DAVID MISHLER,

24 knowingly and intentionally conspired to devise and execute a scheme and artifice to defraud as to a  
25 material matter, and to obtain money and property by means of materially false and fraudulent pretenses,  
26 representations, and promises, and to cause the interstate wire transmission of writings, signs, signals  
27 and sounds for the purpose of executing that scheme.

28 //

MANNER AND MEANS OF CONSPIRACY

11. Beginning in 2011, SCHOENWISNER and MISHLER agreed to engage in a scheme to defraud the Burlingame hotel. As part of the agreement, MISHLER agreed to falsify, and did falsify, Burlingame hotel purchase orders sent to SCHOENWISNER/HAPPE by listing certain items on the purchase orders that he intended the Burlingame hotel would be billed for, but that both he and SCHOENWISNER did not intend to be delivered, and that were not in fact delivered, to the Burlingame hotel.

12. As part of the scheme, SCHOENWISNER/HAPPE used the false purchase orders created by MISHLER to create corresponding false invoices that requested payment from the Burlingame hotel for items listed on the purchase orders and invoices, including those items SCHOENWISNER and MISHLER agreed would not be delivered or supplied to the Burlingame hotel.

13. After receiving the false SCHOENWISNER/HAPPE invoices, the Burlingame hotel issued payment, via check, to SCHOENWISNER/HAPPE for the entire amount listed on the invoices submitted to the Burlingame hotel, including payment for items SCHOENWISNER did not deliver to the Burlingame hotel.

14. As part of the scheme, SCHOENWISNER deposited and cashed, or caused to be deposited and cashed, the checks from the Burlingame hotel to SCHOENWISNER/HAPPE into Bank of the West accounts owned and/or controlled by SCHOENWISNER/HAPPE.

15. As part of the agreement to defraud the Burlingame hotel, SCHOENWISNER and MISHLER agreed to share the illicit proceeds obtained from the Burlingame hotel for those items not actually delivered to the Burlingame hotel, but for which the Burlingame hotel was billed for and for which it paid SCHOENWISNER/HAPPE. As part of the agreement, SCHOENWISNER took an initial 10% of the illicit proceeds for purported income tax liability, and the remaining portion of the illicit proceeds were split equally between SCHOENWISNER and MISHLER.

16. SCHOENWISNER withdrew cash from bank accounts at Bank of the West that he owned and controlled, and paid MISHLER his equal portion of the profits from the scheme.

17. In furtherance of the scheme to defraud, SCHOENWISNER and MISHLER carried out the following fraudulent transactions, among others:

1           a.       On January 31, 2016, MISHLER created and signed Burlingame hotel purchase order EX  
2 4942, which requested several items from SCHOENWISNER/HAPPE for a total cost to Burlingame  
3 hotel of \$2,922.44. SCHOENWISNER caused invoice number 014942 to be created, which requested  
4 payment from the Burlingame hotel of \$2,922.44 and corresponded to Burlingame hotel purchase order  
5 EX 4942. SCHOENWISNER submitted that invoice to Burlingame hotel. Both purchase order EX  
6 4942 and invoice 014942 contained \$1,092.64 of false order items that SCHOENWISNER and  
7 MISHLER agreed would be billed to the Burlingame hotel, but not delivered. On February 12, 2016,  
8 the Burlingame hotel approved payment for various HAPPE invoices, including HAPPE invoice number  
9 014942, and issued a check to SCHOENWISNER/HAPPE for payment. SCHOENWISNER deposited,  
10 or caused to be deposited, the Burlingame hotel check on March 11, 2016, into Bank of the West  
11 accounts owned or controlled by SCHOENWISNER. SCHOENWISNER distributed to MISHLER his  
12 portion of the illicit proceeds.

13           b.       On February 1, 2016, MISHLER created and signed Burlingame hotel purchase order EX  
14 4943, which requested several items from HAPPE for a total cost to Burlingame hotel of \$1,984.30.  
15 SCHOENWISNER caused invoice number 024943 to be created, which requested payment of  
16 \$1,984.30, and corresponded to purchase order EX 4943. SCHOENWISNER submitted that invoice to  
17 Burlingame hotel. Both purchase order EX 4943 and invoice 024943 contained \$1,227 of false order  
18 items that SCHOENWISNER and MISHLER agreed would be billed to the Burlingame hotel, but not  
19 delivered. On February 24, 2016, the Burlingame hotel approved payment for various HAPPE invoices,  
20 including HAPPE invoice number 024943, and issued a check to SCHOENWISNER/HAPPE for  
21 payment. SCHOENWISNER deposited, or caused to be deposited, the Burlingame hotel check on April  
22 6, 2016, into Bank of the West accounts owned and/or controlled by SCHOENWISNER.  
23 SCHOENWISNER distributed to MISHLER his portion of the illicit proceeds.

24           c.       On April 22, 2016, MISHLER created and signed Burlingame hotel purchase order EX  
25 5119, which requested several items from HAPPE for a total cost to the Burlingame hotel of \$2,683.58.  
26 SCHOENWISNER caused invoice number 23146 to be created, which requested payment of \$2,683.58  
27 and corresponded to purchase order EX 5119. SCHOENWISNER submitted that invoice to the  
28 Burlingame hotel. Both purchase order EX 5119 and invoice 23146 contained \$2,462 of false order

items that SCHOENWISNER and MISHLER agreed would be billed to the Burlingame hotel, but not delivered. On May 11, 2016, the Burlingame hotel approved payment for various HAPPE invoices, including HAPPE invoice number 23146, and issued a check to SCHOENWISNER/HAPPE for payment. SCHOENWISNER deposited, or caused to be deposited, the Burlingame hotel check on July 8, 2016, into Bank of the West bank accounts owned and/or controlled by SCHOENWISNER. SCHOENWISNER distributed to MISHLER his portion of the illicit proceeds.

All in violation of Title 18, United States Code, Section 1349.

COUNTS TWO THROUGH FOUR: (18 U.S.C. § 1343 – Wire Fraud)

18. Paragraphs 1 through 17 are incorporated and realleged as if fully set forth here.

19. On or about the dates set forth below, in the Northern District of California and elsewhere, for the purpose of executing a scheme and artifice to defraud the Burlingame hotel as to a material matter, and for obtaining money, by means of materially false and fraudulent pretenses, representations, and promises, the defendants,

ERICH SCHOENWISNER, and  
DAVID MISHLER,

knowingly caused to be transmitted and aided and abetted in causing the interstate wire transmission of writings, signs, signals, and sounds for the purpose of executing the scheme, specifically, on the dates listed below, interstate wires were sent from a Bank of the West in California to Wells Fargo N.A., check processing sites located in Arizona and Minnesota, to confirm the presence of funds.

Count	Date of Wire Transmission	Burlingame hotel Check No.	Total Invoice Amount	Amount of Payment Consisting of Fraud Proceeds
2	03/11/2016	48283	\$2,992.44	\$1,092.64
3	04/05/2016	48325	\$1,984.30	\$1,227
4	07/08/2016	48976	\$2,683.58	\$2,462

Each in violation of Title 18, United States Code, Section 1343.

COUNT FIVE: (26 U.S.C. § 7206(1) – Making and Subscribing A False Tax Return)

20. Paragraphs 1 through 19 are incorporated and realleged as if fully set forth here.

21. On or about April 15, 2017, in the Northern District of California, and elsewhere, the defendant

## ERICH SCHOENWISNER

did willfully make and subscribe a Form 1040, U.S. Individual Income Tax Return, for the calendar year 2016, verified by a written declaration that it was made under the penalties of perjury, even though SCHOENWISNER did not believe the tax return, which was filed with the IRS, to be true and correct as to every material matter in that the return reported false independent contractor business expenses that reduced HAPPE'S net profit, whereas, he then knew and believed that the independent contractor business expenses he reported that he paid in connection with HAPPE's business activities were false at the time of filing the return, and he knew and believed that he was only allowed by law and regulation to deduct those business expenses from HAPPE's gross income that were actually paid for independent contractor services.

In violation of Title 26, United States Code, Section 7206(1).

COUNT SIX: (26 U.S.C. § 7206(1) - Making and Subscribing A False Tax Return)

22. Paragraphs 1 through 19 are incorporated and realleged as if fully set forth here.

23. On or about April 15, 2017, in the Northern District of California, and elsewhere, the defendant

## DAVID MISHLER

did willfully make and subscribe a Form 1040, U.S. Individual Income Tax Return, for the calendar year 2016, verified by a written declaration that it was made under the penalties of perjury, even though MISHLER did not believe the tax return, which was filed with the IRS, to be true and correct as to every material matter in that the return underreported the illegal source income he received from a scheme to defraud the Burlingame hotel and instead reported income on his tax return in the amount of \$200,203, whereas he knew and believed he was required to report all income he received, from whatever source derived, at the time of filing the return, and he knew and believed that he was required by law and regulation to report all income he received on his tax return, from whatever source derived.

In violation of Title 26, United States Code, Section 7206(1).

FORFEITURE ALLEGATION: (18 U.S.C. § 981(a)(1)(C); 28 U.S.C. § 2461(c))

24. The allegations contained in Counts One through Four of this Information are realleged and by this reference fully incorporated herein for the purpose of alleging forfeiture pursuant to the

provisions of Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

25. Upon conviction of any of the offenses alleged in Counts One through Four of this Information, the defendants,

ERICH SCHOENWISNER and  
DAVID MISHLER,

shall, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and title 28, United States Code, Section 2461(c), forfeit to the United States any property, real or personal, which constitutes or is derived from proceeds traceable to said violations, including but not limited to a forfeiture money judgment.

26. If, as a result of any act or omission of the defendant, any of said property

- a) cannot be located upon the exercise of due diligence;
- b) has been transferred or sold to or deposited with, a third person;
- c) has been placed beyond the jurisdiction of the Court;
- d) has been substantially diminished in value; or
- e) has been commingled with other property which cannot be divided without difficulty;

the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

All pursuant to Title 18, United States Code, Section 981(a)(1)(C), Title 28, United States Code, Section 2461(c), and Rule 32.2 of the Federal Rules of Criminal Procedure.

DAVID L. ANDERSON  
United States Attorney

Dated: 2/26/19

JOHN H. NEMANN  
Deputy Chief, Criminal Division

Approved as to Form

JOSE A. OLIVERA

Assistant United States Attorney

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**FILED**

MAR - 4 2019

SUSAN Y. SOONG  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**CRIMINAL COVER SHEET**

**Instructions:** Effective November 1, 2016, this Criminal Cover Sheet must be completed and submitted, along with the Defendant Information Form, for each new criminal case.

CASE NAME:

CASE NUMBER:

USA V. ERICH SCHOENWISNER AND DAVID MISHLER

CR 19-00105-RS

Is This Case Under Seal?

Yes

No ☒

Total Number of Defendants:

1

2-7 ☒

8 or more

Does this case involve ONLY charges under 8 U.S.C. § 1325 and/or 1326?

Yes

No ☒

Venue (Per Crim. L.R. 18-1):

SF

☒

OAK

SJ

Is this a potential high-cost case?

Yes

No ☒

Is any defendant charged with a death-penalty-eligible crime?

Yes

No ☒

Is this a RICO Act gang case?

Yes

No ☒

Assigned AUSA

(Lead Attorney): JOSE OLIVERA, AUSA

Date Submitted: 3/4/19

Comments: